

## **ATTACHMENT 2**



IN REPLY REFER TO:

# United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168  
Yellowstone National Park  
Wyoming 82190

A7221(YELL)

VIA EMAIL – NO HARD COPY TO FOLLOW

August 22, 2018

Mr. Darrell Geist  
Buffalo Field Campaign  
P.O. Box 957  
West Yellowstone, Montana 59758  
z@wildrockies.org

Dear Mr. Geist:

This letter is the final response to your Freedom of Information Act (FOIA) request dated and received June 20, 2018, in which you requested “The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem,” excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on [ibmp.info](http://ibmp.info). An initial response was sent to you on July 18, 2018.

Your request has been assigned FOIA control number NPS-2018-00887.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; and (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior (“Department”) implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department’s web site, [www.doi.gov/foia](http://www.doi.gov/foia), or the United States Department of Justice web site, [www.usdoj.gov](http://www.usdoj.gov).

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the

decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions. The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). We are withholding 2 pages in part under Exemption 7 because they are protected under the following subpart. Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law. For the materials that have been withheld under 7(E), we have determined that they are techniques for law enforcement investigations or prosecutions; they are procedures for law enforcement investigations or prosecutions; and they are guidelines for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law.

Twenty (20) documents totaling 108 pages have been released in their entirety:

1. March 19, 2017 – email from Dan Wenk to Sue Masica, Subject: Secretary’s visit (3 pp.)
2. March 20, 2017 – email from Michael Reynolds to Sue Masica, Subject: Re: Secretary’s visit (3 pp.)
3. March 21, 2017 – email from Herbert Frost to Sue Masica, Subject: Re: Secretary’s visit (3 pp.)
4. March 27, 2017 – email from Herbert Frost to Dan Wenk, Sue Masica, Subject: FwdL YELL Bison briefing update: due today at 4:00 EDT (3 pp.)
5. March 27, 2017 – email from Dan Wenk to Sue Masica, Subject: Re: YELL Bison briefing update: due today at 4:00 EDT (3 pp.)
6. September 8, 2017 – email from Dan Wenk to Sue Masica, Subject: Background Bison Brief (3 pp.)
7. September 8, 2017 – email from Sue Masica to Todd Willens, Subject: Yellowstone Bison (4 pp.)
8. March 12, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Fwd: YELL\_BisonManagement\_3-12-18\_FINAL.docx (3 pp.)
9. March 13, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: YELL\_BisonManagement\_3-12-18\_FINAL.docx (3 pp.)
10. March 13, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: YELL\_BisonManagement\_3-12-18\_FINAL.docx (2 pp.)
11. May 11, 2018 – email from Dan Wenk to Dave Mihalic, Subject: BisonSlides\_IBMP\_WinterOps\_NPS\_4-25.pptx (8 pp.)
12. May 14, 2018 – email from Dan Wenk to Susan Combs, Subject: Bison Briefs (6 pp.)
13. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: fuhlendorf et al 2012.pdf (14 pp.)
14. May 17, 2018 – email from Dan Wenk to Dave Mihalic, Subject: BisonAbundanceIBMP\_May2018.docx (3 pp.)
15. June 6, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Fwd: PJ’s request-description of agreement with Washington Lee Univ (33 pp.)

16. June 7, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: PJ's request-description of agreement with Washington Lee Univ (3 pp.)
17. June 7, 2018 – email from Randal Bowman to Dave Mihalic, Subject: Re: PJ's request-description of agreement with Washington Lee Univ (3 pp.)
18. June 11, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Bison Brief (3 pp.)
19. June 11, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Bison (1 page)
20. June 12, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: Bison Brief (4 pp.)

Seventeen (17) documents totaling 149 pages have been released with redactions made under Exemption (b)5 Draft Deliberative Privilege as cited above:

1. March 8, 2017 – email from P.J. White to Dan Wenk, Subject: Bison briefing statements for the Secretary of the Interior (6 pp.)
2. March 14, 2017 – email from Sue Masica to Dan Wenk, Subject: Bison overview BP (4 pp.)
3. May 24, 2017 – email from P.J. White to Dan Wenk, Patrick Kenney, Jennifer Carpenter, Pete Webster, Subject: (Subject Line Withheld under Exemption (b)5 Draft Deliberative Privilege) (18 pp.)
4. June 22, 2017 – email from Dan Wenk to Bert Frost, Sue Masica, Subject: Fwd: Bison briefs (4 pp.)
5. January 25, 2018 – email from Tim Reid to P.J. White, Jennifer Carpenter, Rick Wallen, Pete Webster, Jody Lyle, Subject: Strategic Mtg-save the date (5 pp.)
6. March 14, 2018 – email from P.J. White to Rick Wallen, Chris Geremia, Subject: Bison science and governance manuscript (14 pp.)
7. March 23, 2018 – email from Tim Reid to Jody Lyle, Subject: Re: information about bison numbers (3 pp.)
8. April 6, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Patrick Kenney, Subject: Recommendations for Bison Conservation and Management (4 pp.)
9. April 17, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Patrick Kenney, Rick Wallen, Subject: Bison strategy meeting on Thursday (3 pp.)
10. April 20, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Rick Wallen, Chris Geremia, Ray McPadden, Subject: Environmental Assessment: Conservation and Management of Yellowstone Bison (59 pp.)
11. April 20, 2018 – email from Tim Reid to Dan Wenk, Jennifer Carpenter, P.J. White, Rick Wallen, Chris Geremia, Subject: IBMP PPT (8 pp.)
12. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Bison habitat (2 pp.)
13. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Sorry to ask... (4 pp.)
14. May 16, 2018 – email from Dan Wenk to Jennifer Carpenter, P.J. White, Tim Reid, Subject: Fwd: Sorry to ask... (2 pp.)
15. May 17, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Rick Wallen, Chris Geremia, Pete Webster, Patrick Kenney, Subject: Briefs on Bison Grazing and Abundance (7 pp.)
16. May 17, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Sorry to ask... (3 pp.)
17. May 17, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: Sorry to ask... (3 pp.)

Two (2) documents totaling 7 pages have been released with redactions made under Exemption (b)7e as cited above:

1. April 10, 2018 – Yellowstone Bison Update (3 pp.)
2. April 10, 2018 – email from Tim Reid to Dave Mihalic, Subject: YELL Bison Update (4 pp.)

The National Park Service consulted with Kate Williams-Shuck, Attorney, Office of the Solicitor, Rocky Mountain Region, United States Department of the Interior, Denver, Colorado, in connection with this FOIA response.

In accordance with Department regulations found at 43 C.F.R. 2.24(d), the following individuals are responsible for the partial denial of your request:

- Sue Masica, Director, Intermountain Region, National Park Service, Denver, Colorado
- Charis Wilson, Freedom of Information Act Officer, National Park Service, Denver, Colorado

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

**Your appeal must be made in writing.** You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

*DOI FOIA/Privacy Act Appeals Office Contact Information*

Department of the Interior

Office of the Solicitor

1849 C Street, N.W.

MS-6556 MIB

Washington, D.C. 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339

Fax: (202) 208-6677

Email: FOIA.Appeals@sol.doi.gov

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
(OGIS) 8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: ogis@nara.gov  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Facsimile: 202-741-5769  
Toll-free: 1-877-684-6448

Fee waivers are determined on a case-by-case basis. All fees have been waived. This letter completes Yellowstone National Park's response to you for this request. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Evans". The signature is fluid and cursive, with "Kerrie" on the top line and "Evans" on the bottom line.

Kerrie Evans  
Freedom of Information Act Officer

Enclosures